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The double proximity paradox in peacebuilding: implementation and perception of the EU rule of law mission in Kosovo

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ABSTRACT

This contribution increases the understanding of the EU's role in post-conflict settings by exploring perceptions of EULEX by local rule of law experts. Drawing on critical peacebuilding and the decline of normative power Europe literatures, we develop an analytical framework, underlining the importance of *the intention–implementation gap* and *the implementation–perception gap* in understanding how EU missions are perceived. By comparing local expert narratives to those of EULEX judges, prosecutors, and legal officers, we contend that the core problem for the negative perception of the mission results from what we call *the double proximity paradox in peacebuilding*. The first paradox is one of implementation and transpires when an actor commits substantial resources to address structural problems in a post-conflict territory due to its centrality for its own interests, but fails to uphold its commitment as its immediate interests can only be achieved through agents who contribute to these problems. The second paradox relates to perception and transpires as high commitments raise expectations of structural impact. The visibility of the actor's investment makes any implementation failures more tangible. The actor is therefore, paradoxically, the most open to criticism in a territory where it is doing the most.

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1. Introduction

The European Union (EU, Union) and Kosovo had enjoyed an awkward relationship even before the latter declared independence in 2008. Although five EU member states still do not recognise its sovereignty, Kosovo is considered a potential candidate for membership in the Union (EU 2003). Opinion polls in Kosovo reveal 80–90 per cent support for membership (Regional Cooperation Council 2019), but Kosovo citizens are the only ones among the potential Western Balkans candidates requiring visas to travel to the EU. The main obstacle in visa liberalisation and the overall progress in the Stabilisation and Association Process have been high levels of organised crime and corruption (Emini and Nechev 2018). In February 2008, as a sign of its commitment to improving Kosovo's rule of law, the Council of the EU established the European Union Rule of Law Mission in Kosovo (EULEX) (EU 2008).

EULEX has its current mandate until 14 June 2020, now focusing on mentoring and advising local institutions. But until June 2018, EULEX was not just the largest and most expensive Common Security and Defence Policy (CSDP) mission, it was also the only mission where the EU had an executive mandate. EU judges, prosecutors, investigators, and customs officials were asked to dispense justice in the most sensitive areas of law: organised crime and corruption, war crimes, terrorism, and inter-ethnic crimes. Unsurprisingly, the mission has been viewed as a test of EU's peacebuilding capability (Keukeleire and Thiers 2010, p. 354, Papadimitriou and Petrov 2012, p. 747). Most research has focused on successes and failures of EULEX from the perspective of the EU (Keukeleire and Thiers 2010, Papadimitriou and Petrov 2012, Grevi 2009, Greiçevci 2011, Kammel 2011, Radin 2014, Zupančič and Pejič 2018), with some peacebuilding studies taking a more bottom-up approach (Visoka 2011, Mahr 2018, Zupančič 2018). These latter studies looked at popular resistance by Kosovo-Albanians and Kosovo-Serbs, and critiques voiced by two prominent political actors: the Movement for Self-Determination and the veterans of the Kosovo Liberation Army. Both the top-down and bottom-up works are highly critical of the mission.

With this article, we aim to increase the understanding of the EU's ability to act in post-conflict settings by exploring perceptions of EULEX by local rule of law experts. Our research focused on the judicial side, as this was not only the most visible, but also the most criticised component.¹ We interviewed local judges and civil society actors, all with deep familiarity with the rule of law in Kosovo and the EU assistance to the sector. Unlike the bottom-up studies above, our focus was on generally constructive agents. Paffenholz (2015, p. 858) argues that the almost exclusive focus on everyday resistance in current critical peacebuilding scholarship is offering a reductive view of the local, constructing it as a binary opposite of the international. We contribute to peacebuilding literature, by focusing on the local level living in a symbiotic relationship with the international. These individuals are also the group through which international actors try to secure local ownership (von Billerbeck 2015, Ejodus 2017), making them consequential for how the EU judges its own success. Their critiques add a bottom-up or "Kosovo" dimension to debates on the "capability-expectations gap" of the EU (Hill 1993), which emphasise the mismatch between EU plans and their execution from the perspective of Brussels and member states.

For the empirical study, we develop an analytical framework, underlining the importance of the *intention-implementation gap* and the *implementation-perception gap* in how international missions are perceived. We systematically compare local expert narratives to those of implementers of the executive mandate – EULEX judges, prosecutors, and legal officers –, trying to understand whether local critiques pertain to the idea or the implementation of the mission. Our data draws on 25 in-depth interviews conducted in Priština and Mitrovica in October 2017.² Our judges were Kosovo-Albanian, as the integration of the Kosovo-Serb judiciary had not occurred yet, while civil society actors came from both majority and minority group and represented NGOs, research institutes, and media. Interviewees were selected according to a snow-ball selection procedure. With local interviews, we prioritised interlocutors with a representative view from different ethnic parts of the society, based on a context- and gender- sensitive understanding of the local dynamics; with international interviewees, we sought different levels and types of experience with EULEX.

We identify several salient critiques of EULEX by local experts and conclude that the core problem for the negative perception of the mission results from what we call *the double proximity paradox in peacebuilding*. The first paradox relates to mission implementation (the intention–implementation gap). It transpires when an actor is willing to dedicate substantial resources (heavy-footprint mission, financial commitment, high-level attention) to address structural problems in a post-conflict territory due to its centrality for its own interests. However, in such a territory the intervening actor will have other priorities, implementation of which often relies on actors responsible for the same structural problems the outside actor is trying to address. Maintaining normative commitments is therefore, paradoxically, the most difficult in an area where the actor's willingness to support these is the greatest. The actor might invest in normative commitments but compromises their implementation due to more immediate concerns. The second paradox relates to how this implementation is perceived (implementation–perception gap). It transpires as the actor commits substantial resources to addressing structural problems, making their implementation more visible. The visibility of this investment and the resulting high expectations make any implementation failures more tangible. The actor is therefore, paradoxically, the most open to criticism in a territory where it is doing the most. As a result, when normative commitments are compromised, due to the first paradox, the actor can be perceived as having achieved even less than what it has.

Our argument is developed through three sections. The first section provides the theoretical backbone for the paper, bringing together literatures on critical peacebuilding and studies on the decline of normative power Europe. Building on these findings, we develop our analytical framework. The second section is a short background on EULEX and the broader EU presence in Kosovo. The third section analyses our empirical material comparing perceptions of EULEX implementation by its staff and local experts. We conclude with some broader observations on the EU's ability to act in post-conflict settings.

2. Liberal peacebuilding and its reception by local actors

2.1. Liberal peacebuilding, its critiques, and policy adaptations

Research on why local actors oppose international peacebuilding achieved a new momentum in the early 2000s as a direct result of limited achievements of several ambitious post-conflict reconstruction programmes, the so-called liberal peacebuilding (Paffenholz 2015). A major component of liberal peacebuilding is “directed at constructing or reconstructing institutions of governance capable of providing citizens with physical and economical safety” (Chesterman 2005, p. 5). Rule of law is a prominent aspect, mostly involving aid to rebuild infrastructure and capacity-building programmes, such as training of local police and judiciary (Tolbert and Solomon 2006, Osland 2019). In some settings, including in Kosovo, these policies were implemented through executive missions.

Liberal peacebuilding is critiqued for being a coercive strategy (Heathershaw 2008, p. 597) that “reflects the practical and ideological interests of the global north” (Mac Ginty 2010, p. 393). As a form, it lacks accountability and local participation in the decision-making; substantively, it pursues the same liberal policies for different contexts, thus not responding to the needs of the local population. While both impact the perception of peacebuilding operations, form is primarily linked to input legitimacy, while

substance to output legitimacy (Scharpf 1999). However, form and substance are inter-linked (Mügge 2011), with liberal rational-legal frameworks influencing the design of peacebuilding missions, and these, in turn, implementing the same liberal rationalities.

A core critique of peacebuilding has been its operationalisation as a one-size-fits-all approach, “peace from IKEA; a flat-pack peace made from standardized components” (Mac Ginty 2008, p. 145). International peacebuilding efforts are implemented through bureaucratic, technical solutions, where thematic expertise is prioritised over local/country knowledge (Autesserre 2014, pp. 68–69). Such an approach leads to instrumentalist understanding of local dynamics and formulaic relations with people living in areas of intervention. This, in turn, impacts the substance of peacebuilding policies and “/a/though peacebuilding is committed to positive peace, its discourses and practices tend to depoliticise peace” (Goetschel and Hagmann 2009, p. 66). When it comes to rule of law, this liberal agenda has mimicked Western standards of justice, promoting accountability, protection of individual rights, equality before law, independent judiciary, and a fair and transparent process (Krastev and Holmes 2018).

To respond to these failures, international actors embraced the idea of local ownership (von Billerbeck 2015, Ejodus 2017). Local ownership is intended to create stronger consultation mechanisms with beneficiaries of international efforts, thus creating more conflict-sensitive policies and a better buy-in. By changing the form of international peacebuilding, that is, its input legitimacy, the substance is assumed to become more legitimate and sustainable. In practice, local ownership is implemented through civil society and local experts (von Billerbeck 2015, Ejodus 2017). Such an approach has been promoted by earlier peacebuilding scholars, who see this level of society having the biggest peacebuilding potential (Lederach 1997). Our study therefore explores critiques by actors who are deemed the natural partners for peacebuilding missions.

While there is a plethora of studies advising institutions how to better implement local ownership (Donais 2009, Zürcher and Barnett 2009), most bottom-up analyses have taken a critical approach (Lemay-Hébert and Kappler 2016). Scholars have argued that local ownership “is neither ‘local’ nor ownership” (Richmond 2012, p. 371), pointing to a fundamental gap between the discourse and practice, as international actors often perceive the devolution of agency to local actors as endangering the achievement of their overall goals (von Billerbeck 2015). Others maintained that these locals are co-opted into the liberal peacebuilding project itself (Mac Ginty 2010, p. 399).

2.2. *The problem of executive missions*

Critiques of liberal peacebuilding are amplified in operations with executive mandates. When international actors are empowered to pass laws, dismiss officials, or, as in the case of EULEX, adjudicate in the most sensitive criminal proceedings, international processes run in parallel to local ones. Some scholars see such transferrals of sovereignty onto international actors as a temporary necessity to restore basic functions of post-conflict states (Caplan 2005, Chesterman 2005), others label them an imperial exercise, dismissing them on principle (Chandler 2006). Looking for reasoning for why locals might object to them, Bain (2003) argues that such operations stand in a fundamental opposition to the right to self-determination and that consent to authority is needed for their legitimacy. Zaum (2007, p. 67) sees the “effectiveness of government” as one of the key sources

of their authority. Scholars disagree whether the opposition to executive missions is due to their intrusive form (input legitimacy) or their failure to deliver (output legitimacy). While some studies have looked at everyday resistance to such missions (Visoka 2011, Mahr 2018), most analyses still take a top-down approach coming to their findings about the (in)appropriateness of the model without researching motivations of local actors.

Executive missions suffer from the lack of local ownership, as they are put in place to temporarily replace deficient local governance. An executive rule of law mission, such as EULEX, to an extent needs to insulate its processes from local actors' involvement if it wants to claim it is acting as an independent judiciary. While these missions still profess to pursue local ownership, as this aids their exit strategy (Caplan 2005), critical scholars have argued that as they are unaccountable to the local level, the processes and policies they put in place are performative and, by definition, cannot be locally owned (Chandler 2006). Notwithstanding this critique, neither problem-solving scholars nor practitioners would disagree that input legitimacy is an especially difficult undertaking for an executive mission.

Executive missions need to primarily rely on output legitimacy, when trying to secure the support of local population (Caplan 2005, Chesterman 2004, Zaum 2007, Peter 2013). Krasner and Risse (2014, p. 557) stipulate that such output legitimacy can be achieved in two ways, first, through expert and moral authority of the intervener, and second, through initial performance of the intervener meeting the expectations of local communities. Expectations are context-specific and would depend on what locals understand as success. Moral and expert authority, conversely, have been conceptualised in the literature. Zaum (2007, pp. 62–67) contends that executive missions maintain moral authority, when they are seen to be advancing intersubjective values that local institutions are not willing or able to deliver on. The moral authority is linked to locals agreeing with mission priorities and deeming that the mission is implementing these. The expert authority is maintained when locals trust that an international mission possesses superior knowledge and integrity to that of their local counterparts (Krasner and Risse 2014, p. 557), meaning, that it is perceived as *an* authority (Friedman 1990).

2.3. The European Union, local ownership, and the limits of normative power Europe

The EU makes a substantial effort in integrating the language of ownership into its external policy discourse, indicating a care about legitimacy and sustainability of its policies. The latest EU Global Strategy lists CSDP operations as one instrument that will “blend top-down and bottom-up efforts fostering the building blocks of sustainable statehood rooted in local agency” (EU 2016a, p. 31). Local authorities and civil societies are identified as actors with whom the EU should work (EU 2016a, p. 31). When it comes to implementation, empirical studies consistently identify the want of input legitimacy as one of the biggest problems for EU operations (Dursun-Ozkanca and Vandemoortele 2012, Rayroux and Wilén 2014, Qehaja and Prezelj 2017). Ejodus (2017, p. 468) furthermore argues that the Union experiences some specific problems when implementing local ownership as its crisis management is “additionally hampered by the politics and policy-making of CSDP”.

Unlike the problems with local ownership (input legitimacy), addressed in more bottom-up studies, the literature in EU studies overall conceptualises the Union as a

particularly good actor to wield moral and expert authority, thus having preconditions for output legitimacy. Debates describing EU as a “normative power” (Manners 2002), “cosmopolitan power” (Sjursen 2006), and “soft power” (Michalski 2005) are underpinned by the idea that EU influences through “the power of ideas” (Galtung 1973, p. 33). In these same discourses, the EU possesses comparative advantages when it comes to civilian expertise. As Merlingen (2007, p. 437) concludes, these debates espouse that “the Union diffuses universal values such as peace, democracy, the rule of law and human rights by virtue of its international presence and value-rational conduct in foreign policy”.

Others have argued that, while the EU has increased its international presence, it might be losing the value-driven external policy, if it ever had one (Merlingen 2007, Hyde-Price 2006). Youngs (2004, p. 415) contends that “instrumentalist security-oriented dynamics persist within the parameters set by norms defining the EU’s identity”. This problem has been noted also in the literature on the Western Balkans, with Ioannides and Collantes-Celador (2011) maintaining that CSDP missions there are increasingly guided by the “internal-external security nexus”. Similar argument has been made in the literature on “stabilitocracy” (Kmezić and Bieber 2017), which concludes that the EU has become content in supporting autocratically minded leaders, who guarantee stability of the region. Our double proximity paradox of peacebuilding builds on these literatures, reasoning that by signalling high commitment for structural reforms, and then abandoning them in practice, local critiques even by generally constructive actors become more salient.

2.4. Analytical framework

Critiques of liberal peacebuilding, especially of executive missions, are manifold. They could be principled, with locals objecting to an executive mission taking over sovereign functions of their state (Chandler 2006, Visoka 2011), or, in a case of contested statehood, to internationals supporting a state (Mahr 2018, Zupančič 2018). Locals could also be objecting to the specific actor underwriting the mission, or to the substantive (liberal) agenda of the mission, arguing that such norms are inappropriate for the context (Lee 2015).

But the negative perception of the mission could also arise when locals agree with the mission’s objectives, but the mission is not delivering on these (*the intention–implementation gap*). Or the work of the mission could be misperceived, again resulting in negative perceptions (*the implementation–perception gap*). These gaps are not surprising as such and there will always be some discrepancy between the stated policy, its implementation, and how local actors perceive this implementation. But when critiques are uniform and concern the core objectives of the mission, understanding why they occur should be of interest not just to peacebuilding scholars but also to the EU.

In our empirical analysis, we compare implementers’ and local accounts of EULEX to elucidate how the two gaps contribute to the negative perception of the mission. Parallels in their critiques reveal inconsistencies between the rhetoric and practice of the EU’s approach to Kosovo and would be an indication of *the intention–implementation gap*. Examples of such critiques, based on the above literature, would be lack of proper implementation of mission priorities, template-based approach to designing the mission, lack of sensitivity to local context, even the lack of local ownership in the design of the mission. An agreement between EULEX and local experts first and foremost

captures concerns about the particularities of the implementation of the EU rule of mission in Kosovo. However, such critiques could also point to more structural concerns, especially when concerning the core objective of the mission and the overarching purpose of EU peacebuilding attempts.

Differences in understandings and critiques of local and EULEX experts, on the other hand, mean that either locals are misperceiving the work of the mission, internationals lack self-awareness of their work, or the two groups do not have a shared understanding of the mission's purpose. Misperceptions and lack of self-awareness go hand in hand, indicating the most obvious *implementation–perception gap*. Examples of such critiques would be the lack of accountability of international staff or their perceived lack of expertise or commitment to their work. Such critiques can be serious contributors to “the bad image” of the mission but are concerns that an underwriter could ameliorate through public relations campaigns or training and stricter accountability procedures for staff (EU 2016b, UN 2017). However, a lack of a shared understanding of the mission's purpose between the implementers and local experts signals a more fundamental concern, not just for the mission, but also for the EU's ability to act in post-conflict settings.

3. The European Union and its rule of law mission in Kosovo

The United Nations (UN) Security Council resolution 1244, which established the UN Interim Administration Mission in Kosovo (UNMIK), allowed for a possibility of an executive mandate in all aspects of civilian administration (UN 1999). While international police officers were deployed immediately after the ceasefire, the UN initially decided not to introduce international jurists (Betts et al. 2001). A Joint Advisory Council, composed of international and Kosovo representatives, selected local judges and prosecutors and as no Kosovo-Serb jurist applied, the composition of the Kosovo judicial system became entirely ethnically Albanian (Skendaj 2014, p. 89). Such a system was widely seen as biased against Kosovo minorities, leading to the eventual deployment of international judges and prosecutors. This bias represents a concern to this day and the integration of Kosovo-Serb judges from the so-called parallel institutions³ is one of the four areas EULEX is focusing on.⁴

The EU has played an increasingly important role in Kosovo since the 1990s, in 2003 including Kosovo in its Stabilisation and Association Process, a policy that serves as a framework for future integration for the Western Balkans states (EU 2003). One of the main priorities in ensuring this European perspective is rule of law. Almost simultaneously as Kosovo proclaimed its independence, in February 2008, the Council of the EU in one Joint Action established both the EU Special Representative (EUSR) and EULEX Kosovo (EU 2008). While EUSR was deployed quickly, the EULEX mission became operational only in April 2009 (Grevi 2009, pp. 356–359). These two missions are still the main EU bodies on the ground, with EUSR now also double-hatted as the Head of EU Office. The EUSR/EU Office is the main political partner, while EULEX is designed as a technical/legal CSDP mission, which took over executive justice functions from UNMIK. Both deal with rule of law issues.

In addition to its substantial ground presence, the EU is involved in broader diplomatic and economic relations with Kosovo and the region. The most notable is the EU-facilitated dialogue for the normalisation of relations between Belgrade and Priština, which is from

2014 facilitated by the High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission (Bátora *et al.* 2018). Exploring these wider engagements is beyond the scope of this article, but there are two features impacting the implementation and perception of EULEX. First, Kosovo and the broader region can be considered a priority in the EU external agenda, seen not only in the substantial ground presence and the financial resources committed, but also in the level of people involved in efforts to address the regional crises. Second, the CSDP mission is part of the EU's comprehensive approach to crises (EU 2013), making EULEX one element of how the EU is implementing multiple objectives in the region. Besides the rule of law, an explicit objective of EULEX, the EU is also contributing to conflict management through the normalisation dialogue, which the mission is supposed to assist (EU, n.d.). Contributions to EULEX are motivated also by concerns for European security, with the mission asked to work on organised crime and its links to European criminal networks (EU 2012). Lastly, given its investment in EULEX, the mission is also a testing ground for EU's nascent foreign policy capacities.

4. Implementation and perception of EULEX by rule of law experts

Over the next section, we unpack critiques of rule of law experts in Kosovo. Drawing on concerns identified in the existing literature and our analytical framework, we identified six possible objections in their narratives: principled resistance; lack of local ownership; CSDP particularities; corruption and lack of accountability; de-prioritisation of the main objective; and unmet expectations.

4.1. Principled resistance to executive powers

Existing scholarship of local contestation in Kosovo (Visoka 2011, Radin 2014, Mahr 2018, Zupančič 2018) has emphasised the importance of principled resistance to EULEX, both among Kosovo-Albanian and Kosovo-Serb population. Kosovo-Albanians are seen to be resisting EULEX as an unaccountable entity trying to replace local institutions, while Kosovo-Serbs see EULEX – despite its status-neutral stance – working with the local judiciary, thus supporting Kosovo-Albanian institutions, which the minority population does not recognise. Our local interlocutors recognised these narratives, but did not see them as central to their critique. Every expert, both majority and minority, acknowledged the magnitude of problems with the local judiciary and saw some value in EULEX, including its executive functions. This comports with Subotic's (2011, p. 310) argument that candidate states who identify strongly with the EU are more willing to accept its intrusive policies.

Our minority interviewees argued that there was a bias in EULEX's mandate, and that this made the support of Kosovo-Serbs difficult. But they did not see contestation as immutable, as all locals end up judging the mission on its results. One argued that initially "the minority people had no trust in EULEX, however, today, they would rather give the case to EULEX than the local judiciary".⁵ This experience was intimated to us also by EULEX staff in Mitrovica, an area where most Kosovo-Serbs live. They recognised some principled resistance, for example, Kosovo-Serbs often refused to accept EULEX correspondence as it bore Kosovo postal stamps.⁶ But they also argued that resistance was more a question of political elites or even Belgrade, and that "normal people" and civil society

were more practical. As parallel institutions could not handle criminal cases, Kosovo-Serbs turned to EULEX for justice. EU courts in Mitrovica, were therefore also dealing with domestic violence cases.⁷

Our Kosovo-Albanian interlocutors intimated even less principled resistance against an executive mission, with local judges broadly agreeing that external help was needed to ameliorate political pressures on the local judiciary. One saw international judges as indispensable in securing trust and integration of minority groups. She held that Kosovo-Serbs and Kosovo-Bosnians had more trust in international judges, which ensured these minorities were seeking formal justice.⁸ Her colleague argued that in war crimes cases, the situation would have been untenable for local judges, who live among the people.⁹ EULEX staff thought that local judges were aware that an executive mandate was needed to protect them from political pressures in cases involving war crimes and high-level corruption. One EULEX judge spoke of a particularly sensitive case she worked on by concluding, “the media reporting was constant and we felt it. I can only imagine how difficult it would have been for a local judge”.¹⁰ Kosovo-Albanian civil society representatives corroborated this atmosphere, seeing some value to EULEX, with statements of outright opposition to its executive mandate directly linked to results, indicating that something else but a principled opposition to the mission was at play. One argued, “we had high expectations and it proved to be a big disappointment”.¹¹ As a result, this interviewee was now against EULEX’s executive mandate. Another provided more nuance by claiming that an executive mission, which does not deliver, is even worse than no executive mission at all: “the whole set-up is the problem – it is creating a disconnect between politicians and voters – there is an additional layer of governance which is the international community. The politicians are not held accountable”.¹²

While several of our interviewees intimated that they wanted EULEX and its executive functions gone, their objection were not outright rejections of missions with executive powers or EU presence. Perhaps unsurprisingly, given that our interviewees were local rule of law experts, the idea of EULEX itself was not communicated to us as highly problematic.

4.2. Lack of local ownership

One of the biggest problems any executive mission faces is lack of local ownership, as key decisions are deliberately taken out of hands of local actors. Critiques of deficiencies in input legitimacy were therefore expected, if anything, based on the existing literature on local resistance in Kosovo (Visoka 2011, Mahr 2018) and broader peacebuilding scholarship, we expected them to be harsher.

Some civil society representatives held that sincere consultations happen only with elites, which the EU is supposed to hold accountable. While the EU and EULEX have put in place consultation mechanisms, these were not deemed genuine. One of the majority representatives argued that “there is a structured platform for dialogue with civil society / ... / but there is no room for criticising the EU”.¹³ The lack of consultation was a particularly acute problem for minority representatives, who saw the mission and the EU focusing on high-level input, including from Belgrade, at the expense of truly local consultations. According to one Kosovo-Serb, “the local institutions are reporting to EULEX but communication only goes in one direction”.¹⁴ Another minority representative mentioned the

curtailed daily contact of Kosovo-Serbs with EULEX staff, which makes the mission less attuned to the concerns of the minority population: “EULEX people don’t go around in the North unless they have high protection.”¹⁵

Others argued that for being an executive mission, EULEX’s track record in consulting locals could have been worse.¹⁶ One Kosovo-Albanian summarised: “We see the EU here on the ground as very active. / ... / We are asked to give general views on different themes and topics and are invited to those where we have expertise.”¹⁷ Local judges similarly intimated a good working relationship with their EULEX counterparts, seeing variation more as a matter of personalities: “some really listen to local interpretations, others are more dismissive”.¹⁸ Another argued that what helped was that most EU judges came from legal systems that had similarities with Kosovo’s. This gave them advantage over UNMIK ones, who were more clearly seen as imposing their working methods.¹⁹ When it came to more systemic consultations, local judges saw these happening through the Kosovo Judicial Council. They were sometimes invited to give opinion on the more political decisions, but overall felt it was appropriate for the mission to primarily deal with formal structures.

EULEX staff were cognisant that the mission did not have the best consultation mechanisms. For most part, EU judges and prosecutors argued that they needed to be insulated from the local population to maintain their independence, adding that the mission leadership should have instituted better consultations.²⁰ They saw their contribution to local ownership in their interactions with local judges and prosecutors. Several criticised the mission for starkly separating its executive and capacity-building work in its 2012 review, arguing that even EULEX implementers were not consulted on this decision.²¹ One concluded, “in the beginning it was hard to gain trust from local judges, and then that trust gets lost as the mandate won’t allow mentoring anymore”.²² In Mitrovica, where the local and EULEX judiciary were entirely separated and with no mixed panels, EULEX and local judges started informally organising jurisprudence meetings. One EU judge saying, “the attendance is not great, but we are trying, as it is important for us to be seen as partners”.²³

Both EULEX and local experts agreed that local ownership is an in-built problem for executive missions, concluding that even with the best intentions, there will inevitably be an *intention–implementation gap*, as the implementer tries to claim it is pursuing locally owned processes, but the design of the mission will not allow for these. An executive mission would heighten, not cause, problems with implementing rule of law priorities. However, local and EULEX judges and prosecutors did see the EU harming its implementation efforts by trying to completely insulate the executive component of the mission from the strengthening one. One EULEX prosecutor concluded that given the little interaction between the strengthening and the executive side of EULEX, even informal feedback from local counterparts, does not reach people who oversee local ownership policies.²⁴

4.3. CSDP staffing, turnover, and the lack of expert authority

Both our local and international experts were stunned about the one-size-fits-all approach the EU adopted in setting up the mission and almost every interviewee mentioned the problem with high turnover of EULEX staff. These were perceived as parachuting in, not knowing the system or Kosovo.²⁵ A local judge argued that the system influenced the

quality of EU judges wanting to serve and the perception of their rulings by the Kosovo-Albanians. Many came from Eastern Europe (Poland and Bulgaria topped the list) and locals, sometimes justifiably, criticised their decisions due to the strong stereotypes about these countries.²⁶ His colleague agreed, adding that through the years she saw some great EU officers, but there were also quite a few who were “clearly not top experts in their own countries”.²⁷ While not expecting judges with experience of war crime cases, she was surprised that some had background in civil not criminal law. EULEX was seen as increasingly lacking expert authority, with one EU judge commenting, “our local colleagues are well educated, they see this”.²⁸

EULEX implementers overall agreed with the analysis of local experts attributing problems to internal EU considerations. There was an overwhelming consensus that in mission planning, the EU was focused on what worked best for the EU, not what was most appropriate for Kosovo. EULEX was staffed in the same manner as other CSDP missions: officials were either seconded by member states or contracted by the mission itself. Such a system was deemed incompatible with the tasks the EU was taking on, “in legal proceedings, you cannot change an investigator every year”.²⁹ This turnover particularly impacted the seconded staff, where the decision on the length of their mandate rested with the sending state. At the time of interviews, roughly three quarters of staff working in the Executive Division were seconded.³⁰ In contrast, contracted staff were hired on short, but renewable, contracts and were therefore seen to be under bigger pressure to perform to the wishes of the management.

One EULEX interlocutor maintained that the mission preferred seconded staff (as these were paid by the sending states) so it repeatedly appointed to managerial posts people who lacked the required experience. Member states were happy to appoint their own to key positions.³¹ Her colleague maintained that the EU should have treated the executive wing of EULEX as an international court. When it came to judges, their position needed to be secure and for a longer period, otherwise it becomes difficult to maintain you are running an independent judiciary.³²

Unlike with the local ownership question, neither local nor EULEX experts saw staffing as an inherent problem for executive missions. They were therefore less sympathetic of the EU implementing its own IKEA/CSDP template, arguing that *this intention–implementation gap* was almost entirely of its own making. They saw staffing as contributing to the problems with normative commitments of the EU as it undermined expert authority of the mission.

4.4. Corruption, lack of accountability and moral authority

Almost every civil society representative we spoke to, mentioned corruption within EULEX at some point, with corrupt EULEX seen as enabling corrupt local elites. According to one Kosovo-Albanian, the general perception is that EULEX is not doing anything about the main problem in Kosovo: “there is a lot of political interference and no MPs in prison”. This interviewee linked the lack of action on local corruption with corruption within EULEX: “78% think that rule of law institutions – locals and EULEX – are influenced by politicians according to a recent poll. We are losing faith in the EU.”³³ Another majority representative was even more explicit, stating “they [EULEX] cannot fight corruption because they are so involved in corruption themselves”.³⁴ Others argued that the mere presence

of EULEX allowed for political interference in local judiciary to persist. As the blame-game continued, the local judiciary could hide behind the mistakes of the international mission.³⁵

In contrast to civil society narratives, every interviewee with direct experience with EULEX, including internationals not employed by the mission and local judges and staff, rejected EULEX suffering from systemic corruption. However, they agreed that the perceived corruption was a major concern and that Brussels and EULEX management should have acted swiftly when allegations started. While a preliminary investigation by the EULEX mission found no evidence of corruption among EULEX staff, and the Jacque independent report (EU 2015) echoed this, rumours of corruption had been flourishing for a long time before the Union acted (Capussela 2015). Jacque criticised the EU for not opening an investigation into the allegations immediately as “[t]his would have prevented the issues that later arose in connection with the use of secret and special procedures, which fuelled suspicions of a cover-up” (EU 2015, p. 8).

Regardless of whether *the implementation–perception gap* was due to misperception or the lack of self-awareness among EU staff, there was a broad agreement that action was needed. If EU findings and EULEX narratives were correct and this truly was a misperception, responding to suspicions of political interference and corruption would have been crucial for any international mission, even more so for one with an executive mandate to fight corruption itself. The ability to claim moral authority in its work is lost otherwise.

4.5. De-prioritisation of rule of law

Local and EULEX experts agreed that despite rule of law being the EU’s lauded priority for Kosovo (EU 2008), in practice, this objective was being sacrificed for immediate security concerns of the EU, which included conflict management between Kosovo and Serbia. As these objectives required an elite buy-in, accountability of these same elites was seen to be lost along the way. One EULEX official commented that Brussels spends an immense amount of energy on the normalisation process, often at the expense of “the real problems” with the Kosovo judiciary.³⁶

Our research supports previous findings on the decline of EU’s value-driven policy in the region, with several local experts using the language of “stabilocracy” or “stabilitocracy” (Kmezić and Bieber 2017). A majority representative encapsulated this:

the EU came to strengthen the rule of law here but did the opposite. The purpose was to make the local judges competent enough for EULEX to leave – but today it is worse than it was in 2008. EU is more interested in stability with Serbia than with what is going on within the country.³⁷

Another saw the main challenge to the sector being in “a political class which has been installed for the sake of stability. / ... / But these political leaders have embedded the structures of corruption and organised crime – the underground is becoming part of the mainstream politics”.³⁸ The EU was seen to be needing these leaders for greater purposes with no interest in holding them accountable.

This sentiment resonated with what EULEX staff told us about how they sensed that the EU maintained a balance between various strong groups needed for broader political agendas. Many listed subtle forms of pressure:³⁹ prosecutors were let known informally

that a certain person should or should not be indicted; EULEX Head of Judges reassigned a sensitive case from a certain judge; interim court measures were not implemented by EULEX police; content of press statements was changed somewhere above; issues raised about handling of a case never received a reply, etc. These examples illustrate the atmosphere among staff and one EULEX employee argued that she constantly feels like there are other things at work. She continued that when things are a bit out of the ordinary, staff are never told why they happen the way they do and that this is not how an independent judiciary is supposed to function. She spoke of a constant consideration of other EU objectives by the management, resulting in the mandate of the mission not being implemented properly.

Other examples related to cases EULEX was prioritising. While the European Court of Auditors (EU 2012) concluded that given the international nature of organised crime, EU security objectives had not been adequately integrated into the mission, our interlocutors offered different opinions. One of them argued that the biggest impact coming out of EULEX deployment was the international police cooperation. He continued that through EU presence on the ground, EULEX investigators were helping build cases in their home countries and that more had been done on this than on the organised crime in Kosovo.⁴⁰

The political considerations in their legal mandate were a source of constant frustration to EULEX staff and some openly stated that despite its heavy footprint, the EU was not serious about rule of law in Kosovo. This lack of normative commitment was recognised as the core problem for the mission also by our local interlocutors. Such broad agreement on a core priority of the mission being sacrificed, reveals that locals are not misperceiving the work of the mission and that there is indeed a great disconnect between rhetoric and practice of the EU, *the intention–implementation gap*. This gap points to a core problem in the EU maintaining its normative commitments when trying to pursue other, more immediate, priorities – our first paradox of peacebuilding.

4.6. The purpose of EULEX and raised expectations

One of the most consequential divergences between local experts and EULEX implementers was in their understanding of the mission's purpose. While all of them supported rule of law and efforts to address endemic corruption, our follow-up queries revealed that the devil was in the detail. Only more detailed questions about concrete frustrations and expectations of EULEX highlighted the disconnect.

Speaking to EULEX executive staff on their expectations and what they would consider a successful mission, they spoke of “working on difficult cases”,⁴¹ “providing independent justice”,⁴² and “leading by example”.⁴³ They were not naïve, but EULEX staff clearly prioritised processes and standards, complaining about how badly local judicial decisions were sometimes reasoned.⁴⁴ They were there to implement a technical mandate and did not have high expectations of their contributions to fighting corruption. In contrast, a local judge grumbled about the length of time it took EULEX judges to resolve a case, saying an EU judge handles less than two cases, while he needs to finish six or so in a year.⁴⁵ His colleague agreed, arguing that international judges write their judgements in more detail, caring too much about their quality. Given the low number of judges in the Kosovo system, local justices were not afforded such a luxury as they needed to provide justice within a reasonable time.⁴⁶ This slow handling of justice was particularly

palpable during the hand-over period and one EULEX official shared that the core of his work represented handing over more than 5000 cases they had been working on to local authorities. Around 1200 cases were inherited from UNMIK and many were still on EULEX's docket ten years later.⁴⁷

With already differing expectations about what rule of law means between local and international judges, the civil society's divergence from EULEX narratives was to be expected. Our civil society interlocutors generally expressed that the EU did not deliver on what it had promised in 2008. One Kosovo-Albanian summed up, "we had high expectations and it proved to be a big disappointment".⁴⁸ Another explained that people expected EULEX to "go after the big fish" but that "this expectation had not been met".⁴⁹ He saw the challenge arising from EULEX being asked for results early on to show its effectiveness and therefore the "low hanging fruits" were picked, such as drug cases, which would not have been hard for the local judiciary to address. A minority representative added, "when you see the cost of the EULEX mission, you would expect more results".⁵⁰ This discrepancy on what would constitute success for EULEX did not escape many of our EU interlocutors. One EULEX judge argued that there were cases, where "everyone in Priština knew that the guy was guilty", but the case was not a solid one and the person was therefore acquitted. Given the high-profile of the case, she knew that locals did not see this as fair or fighting corruption.⁵¹ Her colleague added, "for us success is justice, for Brussels and locals it means convictions".⁵²

This mention of Brussels having a different expectation of what would be success for EULEX than the mission staff, was intimated to us on several occasions, with both locals and EULEX staff agreeing that, when the mission was launched, the EU communicated high political ambitions for what EULEX was there to achieve. This expectation was fuelled through value-driven rhetoric, unprecedented investment, and the many high-profile visits. A technical mission, even if everything was implemented perfectly, was never going to be able to meet this ambition. While the different narratives of success between local and EULEX experts indicate an *implementation-perception gap*, they also point to what we refer to as the second paradox of peacebuilding, which goes beyond the practical implementation of this individual mission. It is a problem of trying to achieve political goals through a technical mission, with the failure to achieve such political goals more visible in a mission, where the intervening actor has raised expectations of success. In such missions, even concrete achievements that fall short of what was communicated can be perceived as failures.

5. Conclusions

An executive rule of law mission in Kosovo was an exceptional undertaking for the Union. An unprecedented commitment from the EU and high approvals for the Union in Kosovo, meant that the mission had pre-conditions to succeed. Since then, EULEX has been criticised in scholarship, EU reports, local media, and perception studies. Even EULEX staff we interviewed struggled to find successes. To gain deeper insights on its lessons, we turned to rule of law experts.

Perhaps unsurprisingly, given their backgrounds and relationship with the EU, Kosovo rule of law experts provided nuanced but somewhat tempered critiques of EULEX. The substantial overlap in their critiques with those of EULEX staff, highlighted that most

concerns related to how the mission was implemented, not misperceptions of its work. The clearest *implementation–perception gap* concerned corruption allegations; an issue our interlocutors agreed the EU could have ameliorated with prompt action. For the EU, EULEX highlights the need for improved accountability procedures.

Conversely, while our experts were sympathetic to some of the problems arising out of the *intention–implementation gap* – most notably, concerns about the lack of local ownership –, they showed less sympathy for what they saw as EU specific problems. Although the EU was in many ways seen as the most appropriate partner, not just because of Kosovo’s membership ambitions but also due to a substantial overlap between the legal systems of Kosovo and EU member states, in other ways the problems were seen to be caused by EU as an actor and were related to what we refer to as the double proximity paradox in peacebuilding.

The first of these EU specific problems was related to CSDP staffing, which resulted in EULEX losing its expert authority. While willing to deploy a heavy-footprint mission due to its deeper interests in the region, the EU ended up prioritising its internal processes over the needs of Kosovo, with the heavy-footprint highlighting its failure to deploy the most appropriate people. This “design flaw” affects an executive mission more than a capacity-building one, but still holds lessons for the EU, who, if it wishes to retain its peacebuilding ambitions, cannot afford to lose credibility among local experts. Nonetheless, staffing, while a complex matter, could be addressed through reforms within the EU/CSDP.

The second – and deeper – problem was the perceived de-prioritisation of rule of law in the EU approach towards the region, which saw Brussels/EULEX management intervening in the work of EULEX judiciary, compromising its independence and moral authority. The sacrificing of normative ambitions for stability concerns has been well explored previously and affects an executive mission more than a capacity-building one. The double proximity paradox is clear; on the one hand, the EU was willing to commit substantial resources to address Kosovo’s issues with rule of law due to their centrality for EU security, on the other, the EU’s immediate security concerns rest on cooperation of political elites, which the mission is supposed to hold accountable. The de-prioritisation of rule of law combined with the high visibility of the mission made its problems more obvious.

The critiques of EULEX hold another lesson for the EU and for broader peacebuilding endeavours, one about the importance of shared expectations between implementers and locals. This is a fundamental problem of peacebuilding exercises, which are designed as technical missions but imbued with all sorts of political aspirations. This affects perception of executive missions particularly as their failure to deliver is concrete. Again, the double proximity paradox is sharp; as Western Balkans is central to EU’s external policy, Kosovo received high-level attention from Brussels committing EULEX to tackling endemic corruption. This raised local expectations, making the eventual failure to meet these political promises through a technical mission more palpable.

While EULEX was a unique mission, which the EU is unlikely to repeat in the immediate future, we nonetheless conclude that its lessons are applicable more broadly. We furthermore maintain that the double proximity paradox is central to understanding why missions where an intervening actor has invested enormously are often perceived more negatively even among the experts.

Notes

1. Police and customs reform have been viewed more favourably in the literature and among the local population (Keukeleire and Thiers 2010).
2. Interviews are anonymised following ethical guidelines of the EUNPACK project and are referenced stating the name of the interviewer and the code of the interviewee.
3. Parallel structures are institutions in Kosovo not mandated by the UN Security Council resolution 1244. Such institutions have been operating under *de facto* authority of the Serbian government (Baylis 2007).
4. Peter, EULEX staff 1, 3 and 6, 23 and 24 October 2017. Also, EU (n.d.).
5. Osland and Peter, local actor 10, 26 October 2017.
6. Peter, EULEX staff 9, 27 October 2017.
7. Peter, EULEX staff 7 and 8, 27 October 2017.
8. Peter, local judge 1, 25 October 2017.
9. Peter, local judge 2, 25 October 2017.
10. Peter, EULEX staff 5, 24 October 2017.
11. Osland, local actor 6, 28 November 2017.
12. Osland, local actor 1, 23 October 2017
13. Osland, local actor 1.
14. Osland and Peter, local actor 11, 26 October 2017.
15. Osland and Peter, local actor 10.
16. Osland, local actors 7 and 6, 25 October and 28 November 2017
17. Osland, local actor 5, 24 October 2017.
18. Peter, local judge 1.
19. Peter, local judge 2.
20. Peter, EULEX staff 4 and 8, 24 and 27 October 2017.
21. Peter, EULEX staff 6, 24 October 2017.
22. Peter, EULEX staff 7.
23. Peter, EULEX staff 8, 27 October 2017.
24. Peter, EULEX staff 6.
25. Osland and Peter, local actor 9, 26 October 2017
26. Peter, local judge 2.
27. Peter, local judge 1.
28. Peter, EULEX staff 4, 24 October 2017.
29. Peter, EULEX staff 10, 27 October 2017.
30. Peter, EULEX staff 1, 23 October 2017.
31. Peter, EULEX staff 6.
32. Peter, EULEX staff 4.
33. Osland, local actor 5.
34. Osland, local actor 6.
35. Osland, local actors 1 and 7.
36. Peter, EULEX staff 6.
37. Osland, local actor 8, 25 October 2017.
38. Osland, local actor 1.
39. To completely protect the anonymity of interviewees on this sensitive issue, no reference to specific interviews is made in this paragraph. This is something that was promised to the interlocutors explicitly (Peter). For further information, please consult EUNPACK Ethical Guidelines.
40. Peter, EULEX staff 2, 23 October 2017.
41. Peter, EULEX staff 4.
42. Peter, EULEX staff 9.
43. Peter, EULEX staff 6.
44. Peter, EULEX staff 4 and 6.
45. Peter, local judge 2.
46. Peter, local judge 1.

47. Peter, EULEX staff 1.
48. Osland, local actor 6.
49. Osland, local actor 7.
50. Osland and Peter, local actor 9.
51. Peter, EULEX staff 5.
52. Peter, EULEX staff 6.

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